IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

Applicants:	Islam et al.	)	Art Unit:	2618
Serial No.:	10/693,346	)	Examiner:	Alam
Filing Date:	24 October 2003	)	Docket No.:	555255012610
		)		

For: "METHODS AND APPARATUS FOR SELECTING A BASE STATION TRANSCEIVER SYSTEM BASED ON SERVICE COMMUNICATION TYPE"

MAIL STOP APPEAL BRIEF – PATENTS
Commissioner for Patents
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APPEAL BRIEF

The Applicants respectfully submit this **Appeal Brief** in response to the Advisory Action of 09 July 2008, and the Final Office Action of 19 March 2008, for the above-referenced patent application.

APPEAL BRIEF

1. REAL PARTY IN INTEREST

The real party in interest is the Research In Motion Limited, the sole assignee of the present application.

2. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences associated with this application.

3. STATUS OF CLAIMS

Claims 1-39 are pending in the present application and provided for in Section 8, Claims Appendix, of the present Appeal Brief. All pending claims 1-39 stand finally rejected as indicated in the Advisory Action of 09 July 2008 and the Final Office Action of 19 March 2008. All pending claims 1-39 are being appealed.

4. STATUS OF AMENDMENTS

The claims were last amended by the Applicants in the Amendment And Request For Reconsideration of 11 December 2008, which was followed by a Request For Reconsideration (without claim amendments) on 16 June 2008. These pending claims 1-39 are provided for in Section 8, Claims Appendix, of the present Appeal Brief.

5. SUMMARY OF CLAIMED SUBJECT MATTER

All pending claims 1-39 are being appealed. Summarized below are the six (6) independent claims on appeal, namely, independent claims 1, 7, 11, 18, 23, and 30.

A. Summary of Independent Claim 1

Independent claim 1 is directed to a method in a mobile telephone *(see e.g. FIG. 1, station 102; FIG. 2, station 202, page 9 at lines 1-5)* for selecting a cellular base station transceiver system *(see e.g. FIG. 2, systems 200; page 9 at lines 4-8)* for communication with the mobile telephone. The mobile telephone is configured for data communications and operative in accordance with a circuit-switched voice service and a packet data service.

Scanning is performed with use of a cellular radio frequency (RF) transceiver *(see FIG. 1, transceiver 108; FIG. 2, subsystem 211)* to identify a plurality of cellular base station transceiver systems *(see e.g. FIG. 2, systems 200; page 9 at lines 4-8)* available for communication. The mobile telephone measures a first energy-to-interference ratio E_C/I_O from a first cellular system and measures a second energy-to-interference ratio E_C/I_O from a second cellular system. Also, the mobile telephone identifies that the first cellular system provides a Third Generation (3G) or greater communication service *(see e.g. FIG. 3, step 308)*, and that the second system fails to provide the 3G or greater communication service *(see e.g. FIG. 3, step 308)* (i.e. it provides a communication service that is less than the 3G or greater communication service).

Based on identifying that the first cellular system provides the 3G or greater communication service and the second cellular fails to provide the 3G or greater communication service, if the first energy-to-interference ratio E_C/I_O is greater than a minimum threshold – even if the first energy-to-interference ratio E_C/I_O is less than

the second energy-to-interference ratio E_C/I_O – the first system is selected for communication over the second cellular system *(see e.g. FIG. 3, step 314)*.

B. Summary of Independent Claim 7

Independent claim 7 is directed to a related method in a mobile station *(see e.g. FIG. 1, station 102; FIG. 2, station 202, page 9 at lines 1-5)* for selecting a cellular base station transceiver system *(see e.g. FIG. 2, systems 200; page 9 at lines 4-8)* for communication. Scanning is performed to identify one or more cellular base station transceiver systems available for communication with the mobile station. The mobile station then identifies that a first system provides a Third Generation (3G) or greater communication service *(see e.g. FIG. 3, step 308)*, whereas a second system fails to provide the 3G or greater communication service, but instead provides a communication service that is less than the 3G or greater communication service *(see e.g. FIG. 3, step 308)*. Based on identifying that the second system fails to provide the 3G or greater communication service, the mobile station produces and sends a list of handoff candidate identifiers to a serving cellular base station transceiver system which includes a first identifier for the first system but excludes a second identifier for the second system *(see e.g. FIG. 3, step 314)*.

C. Summary of Independent Claim 11

Independent claim 11 is directed to a mobile telephone *(see e.g. FIG. 1, station 102; FIG. 2, station 202, page 9 at lines 1-5)* corresponding to the method of independent claim 1. The mobile telephone is configured for data communications and is operative in accordance with a circuit-switched voice service and a packet data service. The mobile telephone has a controller *(see e.g. FIG. 1, controller 106)* and a cellular radio frequency (RF) transceiver *(see FIG. 1, transceiver 108; FIG. 2, subsystem 211)* coupled to the controller. The cellular RF transceiver includes a receiver and a transmitter operative for communications with cellular base station

transceiver systems *(see e.g. FIG. 2, systems 200; page 9 at lines 4-8)*. The mobile telephone also has a user interface for use in initiating voice calls via the cellular base station transceiver systems. The mobile telephone is adapted to utilize the controller and the cellular RF transceiver for selecting a cellular base station transceiver system for communication by performing specific actions as recited in relation to method claim 1.

D. Summary of Independent Claim 18

Independent claim 18 is directed to a mobile station *(see e.g. FIG. 1, station 102; FIG. 2, station 202, page 9 at lines 1-5)* corresponding to the method of independent claim 7. The mobile station has a controller *(see e.g. FIG. 1, controller 106)* and a cellular radio frequency (RF) transceiver circuitry *(see FIG. 1, transceiver 108; FIG. 2, subsystem 211)* coupled to the controller. The cellular RF transceiver circuitry includes a receiver and a transmitter. The mobile station is adapted to utilize the controller and the cellular RF transceiver circuitry to select a cellular base station transceiver system for communication by performing the specific actions described in relation to method claim 7.

E. Summary of Independent Claim 23

Independent claim 23 is directed to a communication system *(see e.g. FIG. 1, system 100; FIG. 2, system 200)* which includes a first cellular network associated with a first cellular base station transceiver system *(see e.g. FIG. 2, systems 200)*, a second cellular network associated with a second cellular base station transceiver system *(see e.g. FIG. 2, systems 200)*, and a mobile telephone *(see e.g. FIG. 1, station 102; FIG. 2, station 202, page 9 at lines 1-5)* configured for data communications and operative in accordance with a circuit-switched voice service and a packet data service. The mobile telephone is described in relation to independent "mobile telephone" claim 11.

F. Summary of Independent Claim 30

Independent claim 30 is directed to a communication system *(see e.g. FIG. 1, system 100; FIG. 2, system 200)* which includes one or more cellular base station transceiver systems *(see e.g. FIG. 2, systems 200; page 9 at lines 4-8)* associated with one or more cellular communication networks, and a mobile station *(see e.g. FIG. 1, station 102; FIG. 2, station 202, page 9 at lines 1-5)*. The mobile station is described in relation to independent "communication system' in claim 18.

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The following grounds of rejection are presented for consideration in the Argument section: all pending claims 1-39 stand finally rejected under **35 U.S.C. § 103(a)** based on varied combined teachings of Feder et al. (U.S. Patent Application Publication 2004/0142693), Einola et al. (International Publication WO 01/22764 A1), Soderbacka et al. (U.S. Patent Application Publication No. 2003/0114158), Kingdon et al. (U.S. Patent No. 6,047,183), and Pecan et al. (U.S. Patent Application Publication 2004/0097233).

7. ARGUMENT

REGARDING CLAIMS 1-6, 11-17, 23-29, AND 36-37

I. The first issue is whether the relied upon art in combination (i.e. combined teachings of Feder et al., Einola et al., and Soderbacka et al.) teaches or suggests each and every limitation of claims 1-6, 11-17, 23-29, and 36-37 for rejection under 35 U.S.C. § 103(a).

A. The Relied Upon Art Do Not Teach Or Suggest Measuring, From The Scanning [Via The Cellular RF Transceiver], A First Energy-To-Interference Ratio E_C/I_O Of The First Cellular Base Station Transceiver System And Measuring, From The Scanning [Via The Cellular RF Transceiver], A Second Energy-To-Interference Ratio E_C/I_O Of The Second Cellular Base Station Transceiver System As The Examiner Argues.

In order to properly establish claim rejections under 35 U.S.C. § 103(a), the prior art in combination must teach or suggest each and every limitation of the claims. The relied upon art fail to teach or suggest each and every limitation of claims 1-6, 11-17, 23-29, and 36-37.

Claims of the present application recite the actions of "measuring, from the scanning, a first energy-to-interference ratio E_C/I_O of the first cellular base station transceiver system" as well as "measuring, from the scanning, a second energy-to-interference ratio E_C/I_O of the second cellular base station transceiver system" (see e.g. method claim 1) or the like.

In the Final Office Action, the Examiner argues that

> Feder as modified by Einola discloses all limitations including measuring a first and

[sic] energy to interface ratio of the first and second transceiver system (see [0031; 0045]; fig. 1).

In response, the Applicants respectfully disagree with the Examiner's characterization and assessment of the relied upon art.

As indicated above, the Examiner refers to paragraphs 31 and 45 of Feder et al. for the teachings of the limitations. However, Feder et al. do not teach a single cellular transceiver which measures, from scanning, a first energy-to-interference ratio E_C/I_O of a first cellular base station transceiver system as well as a second energy-to-interference ratio energy-to-interference ratio E_C/I_O of a second cellular base station transceiver system. Feder et al. do not teach or suggest analysis with first and second cellular systems as claimed.

Instead, the Feder et al. reference is directed specifically to selection between heterogeneous wireless networks for data communications – specifically, between Third Generation (3G), 802.11 Wireless Local Area Network (WLAN), and Wireless Personal Area Network (PAN) systems. As stated in the Feder et al. reference in paragraph 19: "[t]he systems detected by the mobile station may include systems of a type, which is different than, and disparate (i.e., not compatible) with respect to, the system current serving the mobile station."

In Feder et al., these different types of networks have different radio interfaces and require different types of signal processing for various received signals. For example, the measurement for an 802.11-based WLAN is signal to noise ratio (SNR). See paragraph [0045] of the Feder et al. reference, where is stated that:

> For example, an appropriate measure of the interference level of the forward link (downlink) in an 802.11-based system is signal to noise ratio (SNR). However, to measure downlink interference in a 3G network, the mobile station must measure a signal energy to

> interference ratio (E_C/I_O) of a received pilot signal. In order to perform a comparison, the SNR and E_C/I_O can be converted to a common parameter by the SSA. (Emphasis Added)

Continuing with paragraph [0046] in Feder et al., it is stated that

> In one embodiment, the different types of measurements may be compared by mapping each into a maximum available data bit rate. Accordingly, in the above example where the available systems include 802.11 network and a 3G network, the SSA may calculate the maximum data bit rate allowed for the 802.11 network based on the measured SNR, and the maximum data rate for the 3G network based on the measured E_C/I_O

As apparent, the mobile of Feder et al. does not measure any E_C/I_O with respect to an 802.11-based system, but rather a SNR or other "common" parameter (e.g. data bit rate).

Therefore, Feder et al. do not teach measuring, from the scanning, a first energy-to-interference ratio E_C/I_O of a first cellular base station transceiver system as well as a second energy-to-interference ratio energy-to-interference ratio E_C/I_O of a second cellular base station transceiver system.

In the *Advisory Action of 09 July 2008*, the Examiner agrees with the Applicants on this point. The Examiner states

> It is true that networks disclosed by Feder are not exclusively cellular … networks, but it would be obvious to apply the same concept to cellular technology, where both a new cellular network and a legacy cellular network are deployed. In light of Feder one would choose the new cellular network even though the signal quality is better than the

> legacy cellular network in order provide better quality of service, such as higher data rate.

As apparent from the above, the Examiner agrees that these limitations are not found in the relied upon art. Instead, the Examiner appears to use his own personal "insight" or knowledge to make up for these missing limitations, even though the Office Action rejection already makes use of three (3) prior art references for claim 1 However, the Examiner provides no affidavit or reasoning regarding his personal "insight" or knowledge.

Since the limitations are clearly not found in the relied upon art, the Applicants respectfully submit that the rejections be withdrawn. Based on these reasons, claims 1-6, 11-17, 23-29, and 36-37 are allowable over the prior art of record.

B. The Relied Upon Art Do Not Teach Or Suggest The Testing Step Of "If, As Identified At The Mobile Telephone, The First Energy-To-Interference Ratio E_C/I_O Is Greater Than A Minimum Threshold, Even If The First Energy-To-Interference Ratio E_C/I_O Is Less Than The Second Energy-To-Interference Ratio E_C/I_O.

Claims of the present application also recite the test of "if, as identified at the mobile telephone, the first energy-to-interference ratio E_C/I_O is greater than a minimum threshold, even if the first energy-to-interference ratio $_C/I_O$ is less than the second energy-to-interference ratio E_C/I_O: causing the first cellular base station transceiver system to be selected for communication over the second cellular base station transceiver system..." (see e.g. method claim 1) or the like.

In the Final Office Action, the Examiner argues the following:

> Feder et al. disclose a method … comprising:
> …
> Selecting a 3G system (read as first base transceiver station) over WLAN system (read as

second base transceiver station) since SLA from the service provider prefers a 3G system (read as second base transceiver station fails to provide the predetermined service; [0052]). A preference level is set by the service provider, which prefers a 3G system (based on data rate, signal quality, etc.; see [0059 – 0068]) to any other system and is hereby construed as selecting a first base station since the second base station, i.e. WLAN system and station, fails to provide the 3G or greater service. In addition, Feder et al. further disclose a rule table (see [0073] and table 3) to store in the mobile client to select a system that is a 3G system (read as first system) when there is a choice between a $3G_{LOW}$ and an 802.11_{LOW} (read as second base station). For clarity, referring to paragraph [0062] if the E_C/I_O measurement is -9dB (read as better than a minimum threshold) for a 3G system (read as first base station) and -7dB for a 802.11 system (read as second base station) while being in the same range "LOW" a 3G system will be selected based on rule table 3 even though the signal quality is better for the 802.11 system (read as the first base station transceiver system has a signal quality that is greater than a minimum threshold, even if the signal quality is less than that of the second base station transceiver system).

In response, the Applicants respectfully disagree with the Examiner's characterization and assessment of the relied upon art.

As described earlier above, Feder et al. do not teach a single cellular transceiver which measures, from scanning, a first energy-to-interference ratio E_C/I_O of a first cellular base station transceiver system as well as a second energy-to-interference ratio energy-to-interference ratio E_C/I_O of a second cellular base station transceiver system. Feder et al. do not teach or suggest analysis with respect to first and second cellular systems as claimed.

Instead, the Feder et al. reference is directed specifically to selection between heterogeneous wireless networks for data communications – specifically, between Third Generation (3G), 802.11 Wireless Local Area Network (WLAN), and Wireless Personal Area Network (PAN) systems. As stated in the Feder et al. reference in paragraph 19: "[t]he systems detected by the mobile station may include systems of a type, which is different than, and disparate (i.e., not compatible) with respect to, the system current serving the mobile station."

In Feder et al., these different types of networks have different radio interfaces and require different types of signal processing for various received signals. For example, the measurement for an 802.11-based WLAN is signal to noise ratio (SNR). See paragraph [0045] of the Feder et al. reference, where is stated that:

> For example, an appropriate measure of the interference level of the forward link (downlink) in an 802.11-based system is signal to noise ratio (SNR). However, to measure downlink interference in a 3G network, the mobile station must measure a signal energy to interference ratio (E_C/I_O) of a received pilot signal. In order to perform a comparison, the SNR and E_C/I_O can be converted to a common parameter by the SSA. (Emphasis Added)

Continuing with paragraph [0046], it is stated that

> In one embodiment, the different types of measurements may be compared by mapping each into a maximum available data bit rate. Accordingly, in the above example where the available systems include 802.11 network and a 3G network, the SSA may calculate the maximum data bit rate allowed for the 802.11 network based on the measured SNR, and the maximum data rate for the 3G network based on the measured E_C/I_O

As apparent, the mobile of Feder et al. does not perform any tests or comparisons based on two different E_C/I_O measurements from two different systems. In contrast, Feder et al. proposes the use of a "common" parameter (e.g. *data bit rate*) to accommodate comparison between the disparate measurements from the disparate packet data networks of interest. Since Feder et al. utilizes such common parameter for comparison, it creates rule tables based on service level or data bit rate classifications (see e.g. paragraphs [0059]-[0068] of Feder et al., and Rule Table 3 on page 3 of Feder et al.).

The Examiner alleges that Feder et al. teach the use of two E_C/I_O measurements from two different systems, but Examiner also bases his reasoning on the use of the rule tables of Feder et al. (e.g. Rule Table 3). *It is clear, however, that if measurements of the same type were taken in Feder et al, there would be no reason to utilize any service level or data bit rate classifications or rule tables.* Therefore, the Examiner's articulated reasoning above in relation to the service level classification in paragraph [0062] and Rule Table 3 is incorrect and unwarranted.

In the *Advisory Action of 09 July 2008*, the Examiner tacitly agrees with the Applicants regarding such missing limitation. The Examiner states

> It is true that networks disclosed by Feder are not exclusively cellular … networks, but it would be obvious to apply the same concept to cellular technology, where both a new cellular network and a legacy cellular network are deployed. In light of Feder one would choose the new cellular network even though the signal quality is better than the legacy cellular network in order provide better quality of service, such as higher data rate.

However, Feder et al. do not suggest that "one would choose the new cellular network even though the signal quality is better than the legacy cellular network". In fact, in the rule tables of Feder et al., *the 3G cellular network is selected only if it has a greater signal quality than the other network. See e.g. Example 3, Table 3 in paragraphs [0079-0081] of Feder et al.*

As apparent, the Examiner appears to use his own personal "insight" or knowledge in the Advisory Action to make up for these missing limitations, even though the Office Action rejection already makes use of three (3) prior art references for claim 1. The Examiner provides no affidavit regarding his personal "insight" or knowledge.

Note that, even if this teaching did exist in the prior art, the Applicants provide reasoning why one ordinarily skilled in the art would not have made such modifications, in Section II (A) below.

As apparent, the prior art relied upon fails to teach the test of "if, as identified at the mobile telephone, the first energy-to-interference ratio E_C/I_O is greater than a minimum threshold, even if the first energy-to-interference ratio E_C/I_O is less than the second energy-to-interference ratio E_C/I_O: causing the first cellular base station transceiver system to be selected for communication over the second cellular base station transceiver system."

Since these limitations are clearly not found in the relied upon art, the Applicants respectfully submit that the rejections be withdrawn. Based on these reasons, claims 1-6, 11-17, 23-29, and 36-37 are allowable over the prior art of record.

II. The second issue is whether one ordinarily skilled in the art would have modified the teachings of the relied upon art to produce that which is claimed in claims 1-6, 11-17, 23-29, and 36-37 for rejection under 35 U.S.C. § 103(a).

A. There Is No Adequate Reason Why One Ordinarily Skilled In The Art Would Have Modified The Selection Technique Of Feder Et Al. To Include The Teachings Of The Other Relied Upon References.

In order to properly establish claim rejections under 35 U.S.C. § 103(a), there must be a proper obviousness/non-obviousness assessment that includes some adequate reasoning and/or demonstration that one ordinarily skilled in the art would have combined the teachings of the references to produce that which is claimed. When considering various prior art teachings for an obviousness/non-obviousness determination under §103,

> the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or non-obviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented. *Graham vs. John Deere Co. of Kansas City*, 383 U.S. 1, pp 17-18 (1966).

In this analysis, a functional approach may be taken which asks whether the improvement of the presented invention is more than a predictable use of prior art elements according to their established functions. It is also helpful and instructive to consider whether there is any teaching, suggestion, or motivation to combine the teachings of the references, either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art,

in a flexible and non-rigid manner. The reason or evidence of a motivation to combine teachings need not be found explicitly in the prior art references, as one may also "look to interrelated teachings of multiple patents; the effects of demands know to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art." *KSR Int'l Co. v. Teleflex Inc. et al.*, 127 S.Ct. 1727, at 1740-41.

Regarding claims 1-6, 11-17, and 23-29, there is no adequate reason why one ordinarily skilled in the art would have modified the selection technique of Feder et al. to include the teachings of the other relied upon references. The relied upon art in combination fails to teach, suggest, or render obvious the steps of "identifying, at the mobile station, that a first cellular base station transceiver system identified from the scanning provides a Third Generation (3G) or greater communication service" and "identifying, at the mobile station, that a second cellular base station transceiver system identified from the scanning fails to provide the 3G or greater communication service but provides a communication service that is less than the 3G or greater communication service" such as "a Second Generation (2G) communication service," and then subsequently cause "the first cellular base station transceiver system to be selected for communication over the second cellular base station transceiver system based at least in part on identifying that the first cellular base station transceiver system provides the 3G or greater communication service and the second cellular base station transceiver system fails to provide the 3G or greater communication service" (see e.g. method claim 1).

One ordinarily skilled in the art would not have sought the data-communication centric teachings of Feder et al. to accommodate circuit-switched voice-capable mobile telephones. For one, the focus of Feder et al. is the use of a *laptop computer* (see e.g. FIG. 1 of Feder et al.) which desires data services (not circuit-switched voice services) from a communication network. Secondly, the Feder et al. reference is directed specifically to selection between *heterogeneous* wireless

networks which provide data communication – specifically, between Third Generation (3G), 802.11 Wireless Local Area Network (WLAN), and Wireless Personal Area Network (PAN) systems. As stated in the Feder et al. reference in paragraph 19: "[t]he systems detected by the mobile station may include systems of a type, which is different than, and disparate (i.e., not compatible) with respect to, the system current serving the mobile station." At the time of Feder et al., standards for selecting between *heterogeneous* wireless networks (e.g. for laptop computers) were not well-defined. This void left some opportunity for devising new selection techniques based on various preferences and desires of the user, some of which are described in the Feder et al. reference.

On the other hand, standards for cellular network selection of *cellular* networks for *mobile telephones* (i.e. that which is claimed) have already been well-defined and documented in cellular standards and specifications. This environment is the background and context of the present invention as defined in claims 1-6, 11-17, and 23-29. Conventional techniques for handing-off between cellular base station cells have been based on E_C/I_O. For example, see paragraph 45 on page 5 of the present application as published:

> ...the mobile station will consider conventional handoff techniques (step 338 through a connector A1). When conventional handoff techniques are considered at step 338, the mobile station facilitates a handoff to the candidate system if its signal quality is stronger than the signal quality of the current system. Conversely, if the signal quality of the candidate system is not better than that of the current system, then a handoff to the candidate system is not initiated and communication is maintained with the current system. In the present embodiment, the signal quality of the candidate system is better or greater than that of the current system if the candidate's system is at least 2 dB greater than that of the current system.

The techniques of the present invention, however, run contrary to traditional

techniques for cellular network selection/handoff. Techniques of the present invention may be distinguished from conventional handoff techniques for cellular networks in that they "[identify], at the mobile station, that a first cellular base station transceiver system identified from the scanning provides a Third Generation (3G) or greater communication service" and "[identify], at the mobile station, that a second cellular base station transceiver system identified from the scanning fails to provide the 3G or greater communication service but provides a communication service that is" e.g. "a Second Generation (2G) communication service," and then subsequently cause "the first cellular base station transceiver system to be selected for communication over the second cellular base station transceiver system based at least in part on identifying that the first cellular base station transceiver system provides the 3G or greater communication service and the second cellular base station transceiver system fails to provide the 3G or greater communication service." This may be done "even if the signal quality [of the first cellular base station transceiver system] is less than that of the second cellular base station transceiver system" as claimed.

One ordinarily skilled in the art would not have sought the data-communication centric teachings of Feder et al. to accommodate circuit-switched voice-capable mobile telephones. The Feder et al. reference does not even address a cellular network that provides a communication service that is less than a 3G communication service such as a Second Generation (2G) communication service. It is not clear from the reference how the laptop computer would operate in the 2G network for data communications, for switching between 2G and 3G networks during such data communications. The *"silence"* in the Feder et al. reference regarding the application of 2G networks, and/or any similar selection or handoff techniques utilized between 2G and 3G networks, is more indicative of the failure of Feder et al. and one ordinarily skilled in the art to appreciate the present techniques

as claimed. Clearly, there is no adequate suggestion or motivation for modifying the teachings of Feder et al.

Again, all pending claims 1-6, 11-17, 23-29, and 36-37 are directed to "*a mobile telephone configured for data communications and operative in accordance with a circuit-switched voice service and a packet data service.*" In contrast, the teachings in Feder et al. reference focus on a *laptop computer* which desires data services (not voice services) from a communication network for communications. As described, the laptop computer in Feder et al. desires and seeks out data-service-capable networks such as 802.11 (WLAN) networks, wireline-based (Internet) networks, or 3G networks, for its computer software applications. Put another way, the teachings and/or focus in Feder et al. reference does not extend from any traditional use of cellular voice networks (e.g. 2G voice-only networks) for network selection (see previous argument presented above).

Additional limitations are recited to further direct, define, and distinguish the techniques of the present application *applicable to 2G/3G cellular systems* from the Feder et al. reference and other prior art of record. The mobile telephone configured for data communications of the present invention utilizes a single *cellular RF transceiver* for scanning while "measuring, from the scanning, a first energy-to-interference ratio E_C/I_O of the first cellular base station transceiver system" and also "measuring, from the scanning, a second energy-to-interference ratio E_C/I_O of the second cellular base station transceiver system." The first cellular base station transceiver system may still be selected for communications over the second cellular base station transceiver system "even if the first energy-to-interference ratio E_C/I_O is less than the second energy-to-interference ratio E_C/I_O," which runs counter to traditional cellular selection/handoff techniques.

Advantageously, a voice and data-capable mobile telephone of the present invention will maintain operation for communications with a 3G network over 2G

networks, even when the 3G network has a lower signal quality over the available 2G networks.

Based on all of the above, there would be no adequate reason why one ordinarily skilled in the art would have modified the Feder et al. reference to obtain the claimed techniques. The Applicants respectfully request the Examiner to withdraw all rejections for claims 1-6, 11-17, 23-29, and 36-37.

REGARDING CLAIMS 7-10, 18-22, 30-35, and 38-39

III. The third issue is whether the relied upon art in combination (i.e. combined teachings of Feder et al., Kingdon, and Soderbacka et al.) teaches or suggests each and every limitation of claims 7-10, 18-22, 30-35, and 38-39 for rejection under 35 U.S.C. § 103(a).

A. The Relied Upon Art Fail To Teach Or Suggest The Step Of Identifying, At The Mobile Station, That At Least A Second Cellular Base Station transceiver Identified From The Scanning Fails To Provide The 3G Or Greater Communication Service For The Mobile Station But Provides A Communication Service That Is Less Than The 3G Or Greater Communication Service.

In order to properly establish claim rejections under 35 U.S.C. § 103(a), the prior art in combination must teach or suggest each and every limitation of the claims. The relied upon art fail to teach or suggest each and every limitation of claims 7-10, 18-22, 30-35, and 38-39.

Claims of the present application recite the actions of "identifying, at the mobile station, that at least a second cellular base station transceiver system identified from the scanning fails to provide the 3G or greater communication

service for the mobile station but provides a communication service that is less than the 3G or greater communication service" (see e.g. method claim 7).

In attempt to identify these limitations, the Examiner states in the Final Office Action that

> Feder et al. disclose a method ... comprising:
> ...
> checking (read as identifying) each available system (read as base station transceiver system) detected in step S10 (see figure 2), to a list of allowable systems in the mobile client (read as mobile station; see [0020]) and determine if the systems are valid according to a Service Level Agreement or SLA from the primary service provider (read as identifying a base station that provides a predetermined service and by default identifying base station that fail to provide the predetermined service; [0020-0021]).

In response, the Applicants respectfully disagree with the Examiner's characterization and assessment of the relied upon art.

For one, the Examiner's articulation of the teachings of Feder et al. are difficult to follow and do not match or parallel that which is claimed. Secondly, there is no *cellular transceiver scanning technique* in Feder et al. for identifying a cellular transceiver system which fails to provide 3G but provides a communication service that is less than 3G. The Feder et al. reference is directed specifically to selection between heterogeneous wireless networks for data communications – specifically, between Third Generation (3G), 802.11 Wireless Local Area Network (WLAN), and Wireless Personal Area Network (PAN) systems. As stated in the Feder et al. reference in paragraph 19: "[t]he systems detected by the mobile station may

include systems of a type, which is different than, and disparate (i.e., not compatible) with respect to, the system current serving the mobile station."

Since these limitations are clearly not found in the relied upon art, the Applicants respectfully submit that the rejections be withdrawn. Based on these reasons, claims 7-10, 18-22, 30-35, and 38-39 are allowable over the prior art of record.

B. The Relied Upon Art Fail To Teach Or Suggest The Steps Of Producing And Sending A List Of Handoff Candidate Identifiers To A Serving Cellular Base Station Transceiver System Which ... Excludes A Second Identifier For The Second Cellular Base Station Transceiver System Based On Identifying That The Second Cellular Base Station Transceiver System Fails To Provide The 3G Or Greater Communication Service.

Claims of the present application also recite the actions of "producing and sending a list of handoff candidate identifiers to a serving cellular base station transceiver system which includes a first identifier for the first cellular base station transceiver system but excludes a second identifier for the second cellular base station transceiver system based on identifying that the second cellular base station transceiver system fails to provide the 3G or greater communication service" (see e.g. method claim 7).

In the Office Action, the Examiner states that

> Kingdon et al. disclose MS (200) produces and sends a list of cell identities (read as handoff candidate identifiers) with strongest signal strengths (read as including certain base station identifiers and inherently excluding certain identifiers based on the selection criteria or services provided) to BSC (240) (read as serving base station transceiver) (see col. 4, line 66 - col. 5,

line 9). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Feder et al. with the teachings of Kingdon et al. in order to assist the base station in the handover process and reduce the burden of processing at the mobile station.

In response, the Applicants respectfully disagree with the Examiner's characterization and assessment of the relied upon art.

The Applicants submit that Kingdon et al. do not teach or suggest the steps of producing and sending of a list of cell identities which excludes certain identifiers based on the selection criteria or services provided. Further, a step of producing and sending a list of cell identities having the strongest signal strengths of the prior art is not the same as excluding identifiers based on any identifying that the system fails to provide a 3G or greater communication service as claimed.

The teachings of Kingdon et al. describe a decision to include cell identities in the message based solely on the strongest signal strength. The teachings of Kingdon et al. do not describe any exclusion of cell identities in the message due to any consideration or identification of what communication services are offered/not offered by the system, as claimed. The second cellular base station transceiver system that is excluded from the list does indeed provide a communication service for the mobile station, but that communication service is less than the 3G or greater communication service, as claimed.

In the Final Office Action, the Examiner asserts that Kingdon et al. may *inherently* exclude certain identifiers based on the selection criteria or services. Even if this were true (which the Applicants assert that it is not), the Examiner has failed to articulate any reasoning in support of such inherency in any of the Office Actions. The inherent property must necessarily be present, and the Examiner must

clearly articulate the reasoning regarding the same in order to properly establish a prima facie case. *However, the Examiner has failed to do so in the Office Actions.*

Later, in the *Advisory Action of 09 July 2008*, the Examiner states the following:

> identification or detection of the 3G or 802.11 or any other network would be inherent in order to apply the preference rule table. For instance, the identification of the 802.11 network would indicate an identification of a second base station that fails to provide 3G or greater communication service in the presence of a 3G network. In addition, it would be obvious in view of Feder and Kingdon to produce and send a list of handoff candidate identifiers that excludes an identifier of an 802.11 network in the presence of 3G network since it is not a preferred network according to the rules table. Therefore, a mobile would not be handed off to a network that is not desired by the user or the service provider due to quality of service, data rate, etc.

As apparent from the Advisory Action, the Examiner attempts to make an inherency argument. However, even assuming that the inherency argument is sufficient (which the Applicants do not assert), the Examiner's reasoning is provided in any untimely fashion at the time of the Advisory Action. It is too late for the Examiner to attempt to establish a prima facie case of obviousness at the time of the Advisory Action. Thus, even in a light most favorable to the Examiner, there has been a failure to properly establish a prima facie case of obviousness until the Advisory Action (if at all).

Even assuming timeliness, the Examiner's argument in the Advisory Action still fails. In the Advisory Action, the Examiner generally *asserts that a teaching of*

Kingdon et al. inherently exists based on teachings in Feder et al. However, an inherent property must necessarily be present in the reference itself.

Clearly, the relied upon art fails to teach or suggest exclusion of cell identities in the message due to consideration or identification of what communication services are offered/not offered by the system, as claimed. Again, the teachings of Kingdon et al. describe a decision to include cell identities in the message based solely on the strongest signal strength, and the teachings of the other relied upon references (e.g. Feder et al.) do not make up for the deficiencies of Kingdon et al. Again, the Examiner appears to use his own personal "insight" or knowledge to make up for these missing limitations, and application of obviousness, even though the Office Action rejection already makes use of three (3) prior art references for claim 7. However, the Examiner provides no affidavit or reasoning regarding his personal "insight" or knowledge.

Since these limitations are clearly not found in the relied upon art, the Applicants respectfully submit that the rejections be withdrawn. Based on these reasons, claims 7-10, 18-22, 30-35, and 38-39 are allowable over the prior art of record.

8. CLAIMS APPENDIX

All pending claims 1-39 being appealed are provided below:

1. (Previously Presented) In a mobile telephone configured for data communications and operative in accordance with a circuit-switched voice service and a packet data service, a method of selecting a cellular base station transceiver system for communication with the mobile telephone comprising the acts of:

scanning, via a cellular radio frequency (RF) transceiver, to identify a plurality of cellular base station transceiver systems available for communication including first and second cellular base station transceiver systems;

measuring, from the scanning, a first energy-to-interference ratio E_C/I_O of the first cellular base station transceiver system;

measuring, from the scanning, a second energy-to-interference ratio E_C/I_O of the second cellular base station transceiver system;

identifying, at the mobile telephone, that the first cellular base station transceiver system provides a Third Generation (3G) or greater communication service;

identifying, at the mobile telephone, that the second cellular base station transceiver system fails to provide the 3G or greater communication service but provides a communication service that is less than the 3G or greater communication service;

if, as identified at the mobile telephone, the first energy-to-interference ratio E_C/I_O is greater than a minimum threshold, even if the first energy-to-interference ratio E_C/I_O is less than the second energy-to-interference ratio E_C/I_O:

causing the first cellular base station transceiver system to be selected for communication over the second cellular base station transceiver system based at least in part on identifying that the first cellular base station transceiver system provides the 3G or greater communication service and

the second cellular base station transceiver system fails to provide the 3G or greater communication service.

2. (Previously Presented) The method of claim 1, wherein the second cellular base station transceiver system provides a Second Generation (2G) communication service.

3. (Previously Presented) The method of claim 1, wherein the act of causing the first cellular base station transceiver system to be selected for communication further comprises:

causing the first cellular base station transceiver system to be selected for communication over the second cellular base station transceiver system if the first energy-to-interference ratio E_C/I_O is greater than the minimum threshold and is less than the second energy-to-interference ratio E_C/I_O.

4. (Previously Presented) The method of claim 1, wherein the method is performed at least in part by the mobile telephone and further comprises:

initially establishing communication with the second cellular base station transceiver system; and

wherein the act of causing the first cellular base station transceiver system to be selected for communication comprises the further act of facilitating a handoff to the first cellular base station transceiver system if the first energy-to-interference ratio E_C/I_O is greater than the minimum threshold, even if the first energy-to-interference ratio E_C/I_O is less than the second energy-to-interference ratio E_C/I_O.

5. (Previously Presented) The method of claim 1, wherein the method is performed at least in part by the mobile telephone and further comprises:

initially establishing communication with the first cellular base station transceiver system which provides the 3G or greater communication service; and

wherein the act of causing the first cellular base station transceiver system to be selected for communication comprises the further act of refraining from handing-off to the second cellular base station transceiver system if the first energy-to-interference ratio E_C/I_O is greater than the minimum threshold, even if the first energy-to-interference ratio E_C/I_O is less than the second energy-to-interference ratio E_C/I_O.

6. (Previously Presented) The method of claim 1, wherein the method is performed at least in part by the mobile telephone, and further comprises:

wherein the act of causing the first cellular base station transceiver system to be selected for communication comprises the further acts of producing and sending a list of one or more handoff candidate identifiers to a serving cellular base station transceiver system which excludes an identifier for the second cellular base station transceiver system.

7. (Previously Presented) A method of selecting a cellular base station transceiver system for communication, comprising:

scanning to identify one or more cellular base station transceiver systems available for communication with a mobile station;

identifying, at the mobile station, that at least a first cellular base station transceiver system identified from the scanning provides a Third Generation (3G) or greater communication service for the mobile station;

identifying, at the mobile station, that at least a second cellular base station transceiver system identified from the scanning fails to provide the 3G or greater communication service for the mobile station but provides a communication service that is less than the 3G or greater communication service; and

producing and sending a list of handoff candidate identifiers to a serving cellular base station transceiver system which includes a first identifier for the first cellular base station transceiver system but excludes a second identifier for the second cellular base station transceiver system based on identifying that the second cellular base station transceiver system fails to provide the 3G or greater communication service.

8. (Previously Presented) The method of claim 7, wherein the acts of producing and sending are performed if, as identified at the mobile station, the first cellular base station transceiver system has a signal quality that is greater than a minimum threshold, even if the signal quality is less than that of the second cellular base station transceiver system.

9. (Previously Presented) The method of claim 7, wherein the second cellular base station transceiver system provides a Second Generation (2G) communication service.

10. (Original) The method of claim 7, wherein the list is sent as part of one of an origination message, a page response message, and a pilot strength measurement message.

11. (Previously Presented) A mobile telephone configured for data communications and operative in accordance with a circuit-switched voice service and a packet data service, the mobile telephone comprising:

a controller;

a cellular radio frequency (RF) transceiver coupled to the controller;

the cellular RF transceiver including a receiver and a transmitter operative for communications with cellular base station transceiver systems;

a user interface for use in initiating voice calls via the cellular base station transceiver systems;

the mobile telephone being adapted to utilize the controller and the cellular RF transceiver for selecting a cellular base station transceiver system for communication by:

scanning, via the cellular RF transceiver, to identify a plurality of cellular base station transceiver systems for communication including first and second cellular base station transceiver systems;

measuring, from the scanning, a first energy-to-interference ratio E_C/I_O of the first cellular base station transceiver system;

measuring, from the scanning, a second energy-to-interference ratio E_C/I_O of the second cellular base station transceiver system;

identifying that the first cellular base station transceiver system provides a Third Generation (3G) or greater communication service;

identifying that the second cellular base station transceiver system fails to provide the 3G or greater communication service but provides a communication service that is less than the 3G or greater communication service; and

if, as identified at the mobile telephone, the first energy-to-interference ratio E_C/I_O is greater than a minimum threshold, even if the first energy-to-interference ratio E_C/I_O is less than the second energy-to-interference ratio E_C/I_O: causing the first cellular base station transceiver system to be selected for communication over the second cellular base station transceiver system based at least in part on identifying that the first cellular base station transceiver system provides the 3G or greater communication service and the second cellular base station transceiver system fails to provide the 3G or greater communication service.

12. (Previously Presented) The mobile telephone of claim 11, wherein the second cellular base station transceiver system provides a Second Generation (2G) communication service.

13. (Previously Presented) The mobile telephone of claim 11, wherein the mobile telephone is further adapted to utilize the controller and the cellular RF transceiver further for selecting the first cellular base station transceiver system for communication over the second cellular base station transceiver system if the first energy-to-interference ratio E_C/I_O is greater than the minimum threshold and is less than the second energy-to-interference ratio E_C/I_O.

14. (Previously Presented) The mobile telephone of claim 11, wherein the mobile telephone is further adapted to utilize the controller and the cellular RF transceiver further for:

initially establishing communication with the second cellular base station transceiver system; and

facilitating a handoff to the first cellular base station transceiver system if the first energy-to-interference ratio E_C/I_O is greater than the minimum threshold, even if the signal quality is less than the second energy-to-interference ratio E_C/I_O.

15. (Previously Presented) The mobile telephone of claim 11, wherein the mobile telephone is further adapted to utilize the controller and the cellular RF transceiver further for:

initially establishing communication with the first cellular base station transceiver system which provides the 3G or greater communication service; and

refraining from handing-off to the second cellular base station transceiver system if the first energy-to-interference ratio E_C/I_O is greater than the minimum

threshold, even if the first energy-to-interference ratio E_C/I_O is less than the second energy-to-interference ratio E_C/I_O.

16. (Previously Presented) The mobile telephone of claim 11, wherein the mobile telephone is further adapted to utilize the controller and the cellular RF transceiver further for:

producing and sending a list of one or more handoff candidate identifiers to a serving cellular base station transceiver system which excludes an identifier for the second cellular base station transceiver system, for causing the first cellular base station transceiver system to be selected for communication.

17. (Previously Presented) The mobile telephone of claim 11, which operates in accordance with Code Division Multiple Access (CDMA) for both the first and the second cellular base station transceiver systems.

18. (Previously Presented) A mobile station, comprising:

a controller;

cellular radio frequency (RF) transceiver circuitry coupled to the controller;

the cellular RF transceiver circuitry including a receiver and a transmitter;

the mobile station being adapted to utilize the controller and the cellular RF transceiver circuitry to select a cellular base station transceiver system for communication by:

scanning to identify one or more cellular base station transceiver systems for communication;

identify that at least a first cellular base station transceiver system identified from the scanning provides a Third Generation (3G) or greater communication service for the mobile station;

identifying that at least a second cellular base station transceiver system identified from the scanning fails to provide the 3G or greater communication service for the mobile station but provides a communication service that is less than the 3G or greater communication service; and

producing and sending a list of one or more handoff candidate identifiers to a serving cellular base station transceiver system which includes a first identifier for the first cellular base station transceiver system but excludes a second identifier for the second cellular base station transceiver system based on identifying that the second cellular base station transceiver system fails to provide the 3G or greater communication service for the mobile station.

19. (Previously Presented) The mobile station of claim 18, wherein the producing and sending are performed if, as identified at the mobile station, the first cellular base station transceiver system has a signal quality that is greater than a minimum threshold, even if the signal quality is less than that of the second cellular base station transceiver system.

20. (Previously Presented) The mobile station of claim 18, which is a mobile telephone configured for data communications and for operating in accordance with a circuit-switched voice service and a packet data service.

21. (Original) The mobile station of claim 18, wherein the list is sent as part of one of an origination message, a page response message, and a pilot strength measurement message.

22. (Previously Presented) The mobile station of claim 18, which operates in accordance with Code Division Multiple Access (CDMA) for both the first and the second cellular base station transceiver systems.

23. (Previously Presented) A communication system, comprising:

a first cellular network associated with a first cellular base station transceiver system;

a second cellular network associated with a second cellular base station transceiver system;

a mobile telephone configured for data communications and operative in accordance with a circuit-switched voice service and a packet data service, the mobile telephone including:

a controller;

a cellular radio frequency (RF) transceiver coupled to the controller;

the cellular RF transceiver including a receiver and a transmitter operative for communications with the first and the second cellular base station transceiver systems;

a user interface for use in initiating voice calls via the cellular base station transceiver systems;

the mobile telephone being adapted to utilize the controller and the cellular RF transceiver to select a cellular base station transceiver system for communication by:

scanning, via the cellular RF transceiver, to identify one or more cellular base station transceiver systems available for communication including the first and the second cellular base station transceiver systems;

measuring, from the scanning, a first energy-to-interference ratio E_C/I_O of the first cellular base station transceiver system;

measuring, from the scanning, a second energy-to-interference ratio E_C/I_O of the second cellular base station transceiver system;

identifying that the first cellular base station transceiver system provides a Third Generation (3G) or greater communication service;

identifying that the second cellular base station transceiver system fails to provide the 3G or greater communication service but provides a communication service that is less than the 3G or greater communication service; and

if, as identified at the mobile telephone, the first energy-to-interference ratio E_C/I_O is greater than a minimum threshold, even if the first energy-to-interference ratio E_C/I_O is less than the second energy-to-interference ratio E_C/I_O: causing the first cellular base station transceiver system to be selected for communication over the second cellular base station transceiver system based at least in part on identifying that the first cellular base station transceiver system provides the 3G or greater communication service and the second cellular base station transceiver system fails to provide the 3G or greater communication service.

24. (Previously Presented) The communication system of claim 23, wherein the second cellular base station transceiver system provides a Second Generation (2G) communication service.

25. (Previously Presented) The communication system of claim 23, wherein the mobile telephone is further adapted to utilize the controller and the cellular RF transceiver further for selecting the first cellular base station transceiver

system for communication over the second cellular base station transceiver system if the first energy-to-interference ratio E_C/I_O is greater than the minimum threshold and the first energy-to-interference ratio E_C/I_O is less the second energy-to-interference ratio E_C/I_O.

26. (Previously Presented) The communication system of claim 23, wherein the mobile telephone is further adapted to utilize the controller and the cellular RF transceiver further for:

initially establishing communication with the second cellular base station transceiver system; and

facilitating a handoff to the first cellular base station transceiver system if the first energy-to-interference ratio E_C/I_O is greater than the minimum threshold, even if the first energy-to-interference ratio E_C/I_O is less the second energy-to-interference ratio E_C/I_O.

27. (Previously Presented) The communication system of claim 23, wherein the mobile telephone is further adapted to utilize the controller and the cellular RF transceiver further for:

initially establishing communication with the first cellular base station transceiver system which provides the 3G or greater communication service; and

refraining from handing-off to the second cellular base station transceiver system if the first energy-to-interference ratio E_C/I_O is greater than the minimum threshold, even if the first energy-to-interference ratio E_C/I_O is less than the second energy-to-interference ratio E_C/I_O.

28. (Previously Presented) The communication system of claim 23, wherein the mobile telephone is further adapted to utilize the controller and the cellular RF transceiver further for:

producing and sending a list of one or more handoff candidate identifiers to a serving cellular base station transceiver system which excludes an identifier for the second cellular base station transceiver system, for causing the first cellular base station transceiver system to be selected for communication.

29. (Previously Presented) The communication system of claim 23, wherein the first and the second cellular base station transceiver systems are compatible with Code Division Multiple Access (CDMA).

30. (Previously Presented) A communication system, comprising:

one or more cellular base station transceiver systems associated with one or more cellular communication networks;

a mobile station including:

a controller;

cellular radio frequency (RF) transceiver circuitry coupled to the controller;

the cellular RF transceiver circuitry including a receiver and a transmitter;

the mobile station using the controller and the cellular RF transceiver circuitry to select a cellular base station transceiver system for communication by:

scanning to identify the one or more cellular base station transceiver systems for communication which include at least first and second cellular base station transceiver systems;

identifying that the first cellular base station transceiver system provides a Third Generation (3G) or greater communication service for the mobile station;

identifying that the second cellular base station transceiver system fails to provide the 3G or greater communication service for the mobile station but provides a communication service that is less than the 3G or greater communication service; and

producing and sending a list of handoff candidate identifiers to a serving cellular base station transceiver system which includes a first identifier for the first cellular base station transceiver system but excludes a second identifier for the second cellular base station transceiver system based on identifying that the second cellular base station transceiver system fails to provide the 3G or greater communication service.

31. (Previously Presented) The communication system of claim 30, wherein the producing and sending are performed if, as identified at the mobile station, the first cellular base station transceiver system has a signal quality that is greater than a minimum threshold, even if the signal quality is less than that of the second cellular base station transceiver system

32. (Previously Presented) The communication system of claim 30, wherein the mobile station is a mobile telephone configured for data communications and operative in accordance with a circuit-switched voice service and a packet data service.

33. (Previously Presented) The communication system of claim 30, wherein the list is sent as part of one of an origination message, a page response message, and a pilot strength measurement message.

34. (Previously Presented) The communication system of claim 30, which is compatible with Code Division Multiple Access (CDMA).

35. (Previously Presented) The communication system of claim 30, wherein the serving cellular base station transceiver system utilizes the list of handoff candidate identifiers to select one of the cellular base station transceiver systems for communication with the mobile station.

36. (Previously Presented) The method of claim 1, further comprising:

receiving, via the cellular RF transceiver, a message or parameters from the first and the second cellular base station transceiver systems which identify whether or not the first and the second cellular base station transceiver systems provide the 3G or greater communication service.

37. (Previously Presented) The method of claim 1, further comprising:

if the first energy-to-interference ratio E_C/I_O is less than the minimum threshold, causing the second cellular base station transceiver system to be selected for communication over the first cellular base station transceiver system; and

allowing a voice call to be established, via the cellular RF transceiver, through the selected first or second cellular base station transceiver system.

38. (Previously Presented) The mobile telephone of claim 11, which is further adapted to utilize the controller and the cellular RF transceiver for receiving a message or parameters from the first and the second cellular base station transceiver systems which identify whether or not the first and the second cellular base station transceiver systems provide the 3G or greater communication service.

39. (Previously Presented) The mobile telephone of claim 11, further comprising:

if the first energy-to-interference ratio E_C/I_O is less than the minimum threshold, causing the second cellular base station transceiver system to be selected for communication over the first cellular base station transceiver system; and

allowing a voice call to be established, via the cellular RF transceiver, through the selected first or second cellular base station transceiver system.

9. EVIDENCE APPENDIX

There is no evidence necessary to provide at this point in the proceedings.

10. RELATED PROCEEDINGS APPENDIX

There are no related proceedings associated with this application.

Based on the above, the Applicant respectfully submits that the Examiner's Section 103(a) rejections are unwarranted. It is believed that pending 1-39 are allowable over the prior art of record and the application is in a condition suitable for allowance.

Thank you for your consideration. The Board is invited to contact the undersigned if necessary to expedite prosecution of this case.

Respectfully Submitted,

/John J. Oskorep/

Date: 24 September 2008

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